



## State of Utah

GARY R. HERBERT

Governor

SPENCER J. COX

Lieutenant Governor

TODD E. KISER

Commissioner

# Insurance Department

## State of Utah Title & Escrow Commission Meeting Meeting Information

**Date:** November 13, 2017

**Time:** 9AM

**Place:** East Building, Copper Room

### MEMBERS

#### COMMISSION MEMBERS

xChair, Alison McCoy (Agency, Tooele County)      xNancy Frandsen (Insurer, Salt Lake County)  
xVice Chair, David Moore (Agency, Salt Lake County)      xJames Swan (Insurer, Salt Lake County)  
Sylvia Andersen (Public Member, Salt Lake County)

#### DEPARTMENT STAFF

xTodd Kiser, <i>Ins. Commissioner</i>	xBrett Barratt, <i>Deputy Comm.</i>	xPerri Babalis, <i>AG Counsel - TEC</i>
Suzette Green-Wright, <i>MC Dir.</i>	Randy Overstreet, <i>Licensing Dir.</i>	xReed Stringham, <i>AG Counsel - UID</i>
Adam Martin, <i>Examiner</i>	Tanna Shurtliff, <i>Examiner</i>	Lisa Watts Baskin, <i>ALJ</i>
xSteve Gooch, <i>PIO Recorder</i>	xTanji Northrup, <i>Asst. Comm.</i>	xMichael Covington, <i>Licensing Spec.</i>

#### PUBLIC

Carol Yamamoto	Blake Heiner	Tim Krueger
Adam Back	Frank Medina	Jeff Wiener
Scott Cope	Wes Jensen [PHONE]	Matt Ryden [PHONE]
Wade Taylor [PHONE]		

### MINUTES — *Approved*

#### *General Session: (Open to the Public)*

- **Welcome** / Alison McCoy, Chair (9:02 AM)
  - Tanna is excused.
  - Suzette is excused.
- **Telephone Roll Call**
- **Adopt Minutes of Previous Meeting**
  - **Motion by David to adopt minutes. Seconded by James. Motion passes 4-0.**
- **Reports**
  - Concur with Licensee Report / Brett
  - Concur with Complaint & Enforcement Report / Brett
    - There's nothing unusual and nothing that really needs to be highlighted.
    - **Motion by David to concur with the Complaint & Enforcement and Licensee reports. Seconded by James. Motion passes 4-0.**
  - Request for Dual Licensee Expedited Request: None
  - Request for Attorney Exemption: None
- **Administrative Proceedings Action** / Brett Barratt
  - Stipulation and Order:
    - Coalition Title Agency (ENF #3946)
      - This action resulted from a 2017 audit by the UID that revealed 2 producers who weren't appointed to the agency. One of the producers had conducted 116 closings; the other had 45.
      - The UID and respondent negotiated a \$2,000 settlement.
      - Nancy recuses herself.

- **Motion by James to concur. Seconded by David. Motion passes 3-0.**
  - Order to Show Cause: None
  - Informal Adjudicative Proceeding and Order: None
  - Notice of Formal Adjudicative Proceeding: None
- **Board Duties & Responsibilities** / Perri
- **Update on 2018 goals** / Alison
  - Alison attended the October ULTA meeting by phone. They were meeting with the Recorders' Association to discuss standardizing recording fees and are working on some legislation along those lines.
  - The ALTA is coming out with new policies and there is an open comment period right now regarding them.
  - Nancy asked if the TEC reached out to the Real Estate Commission. Alison says she checked the REC's agendas, but there hasn't been anything regarding the REPC addendum. She has heard through word of mouth that it will be approved in November.
- **New Business**
  - Discuss amendments to R590-142-4 re: rule that no more than ½ CE be from one insurer / James
    - James wants to discuss whether the Department or TEC would be open to amending the rule to include a carve-out for title licensees to obtain all of their CE from one insurer. He says underwriters are willing to provide all CE hours and feel qualified to provide that training. The restriction leads to unnecessary scrambling for licensees to find ways to get their CE when it would be easy to get it from one source.
    - Commissioner Kiser says he doesn't know the history behind the restriction, but the reason it was put into statute is influence. In his insurance practice, it wasn't ever a concern that he would get 50% from one provider. The only way it would happen is if he was studying for a designation, and that would take several years to complete. The system for managing CE is through Sircon, and they haven't had the ability to track title in their system. However, as of January 1, the UID will be able to track title CE through Sircon. The notification was put on licenses to notify the title industry that they're being tracked now.
    - Commissioner Kiser says there's concern that there isn't much CE available other than through the insurer, but really there are a lot of people offering it.
    - Tanji Northrup says the requirement has been on the books since 1994 and is applied across all lines of insurance — there is no carve-out for any type of producer.
    - Michael Covington says she understands that the regulation was put in place because when producers would go to an insurer for CE, oftentimes it would turn into a recruitment drive. Now that we've gotten past that, the insurers are talking about the basics of what they offer customers, who it's good for, etc. The regulation was left in because of concern that if it was taken out, it would go back to recruitment.
    - Tanji says other concerns are that the producer's license is for the market as a whole, it's not specific to a particular insurer. We want producers to be well rounded. If they're getting all CE from one source, they could have a limited view of what they can offer. More sources of CE gives a broader view of the market.
    - David notes that there are 3 types of producers: those who have to have hours, those who have to have half the hours, and those who don't need any hours. Title in general only requires half the hours that other lines need. When David's license comes up for renewal, he gets mailings from a dozen different providers, so there are a lot of CE sources out there.
    - Commissioner Kiser would like to see the rule stay how it is. It is not necessarily harmful to get it all from one insurer, but having diversity is good. There's an ease that comes with getting all CE from one insurer, and he is interested in hearing the industry's viewpoint to understand their needs. It's been easy to get CE at an insurer, and the UID will not put people in harm's way who have done all their hours with one source. He will give people time to conform.

- James says he sees people cramming at the last minute to get their CE done, and they go find online courses that might not be title-related at all, just so they can get the hours. If we're concerned about quality, we're not getting it now. If the UID is going to enforce the rule, people will go get whatever CE they can, whether it's relevant or not. He says title insurers seem to teach the same things and the same views. Enforcing the current regulation could lead to the unintended consequence of people going online for learning and not getting the best information.
- David notes that besides the 50% insurer rule, there's also a 50% rule for online learning. James says he thinks most people will plan to get half the credits from an insurer and half from online courses. Those online courses would likely be junk hours.
- Nancy clarifies that the rule says the 50% rule is for "one or more insurers." So, for instance, if a producer got 50% of their CE hours from Stewart, they couldn't get the other 50% from another insurer — it's a total of 50% from insurers as a whole. She says employers don't like it when employees have to leave the office for 4-5 hours. Insurers have the ability to bring people in from across the country to do webinars in many different areas. The rule makes sense, but it will be hard to adjust to it.
- Scott Cope says he sees agents getting inappropriate CE in his office as they get down to the wire. But the CE they get from underwriters is very specific and applicable to what they do. He notes that ULTA CE is coming from speakers that work for insurers anyway. The good CE is coming from the same sources no matter what. He would like to see both 50% requirements to go away.
- Commissioner Kiser asks if there are concerns about a producer getting 100% of their CE from a single insurer. Scott says most CE comes from underwriters they have a contract with anyway, so it's less likely to be a sales pitch. Commissioner Kiser says title people getting medical CE is a red flag because it's not accomplishing what CE needs to be doing.
- David notes that live webinars don't count under the online exclusion, as long as they're live. Michael clarifies that online can be either self-study or classroom/classroom-equivalent. Self-study would be reading the material and doing a test. The classroom type is timed whether live in a classroom or similar instruction. She suggests that people in need of CE hours should do ethics CE rather than CE from unrelated lines of insurance.
- Nancy says Stewart used to do a live webinar, then post the recording on their website for those who couldn't attend the live webinar. Someone filed a complaint with the UID about the recorded version, so they no longer post it. Other states allow recordings to be used until the end of the month, but Utah does not.
- Alison notes that insurers offer CE free of charge, which is nice for small businesses that are sensitive to additional costs. It's good for her company to be able to log into webinars and not have to leave the office, and also it's free. She asks if it might be possible to raise the percentage for title producers, so maybe no more than 75% could come from insurers.
- Commissioner Kiser says the argument is very persuasive. There's value in employees not having to leave the office for CE. Clearly, changing the regulation could have an impact on people like David who provide CE unaffiliated with an insurer, so that will require additional discussion. Commissioner Kiser says quality and meaningful CE is what should drive the discussion, then ease of access for producers. He notes that clear loyalties have come out during the discussion. Do we need to be concerned about that loyalty? Scott says loyalties to an underwriter don't necessarily lie with the CE. If an underwriter came in and provided 10 times the CE, it wouldn't get them more actual business.
- James says if there's a rule that you can only get a certain amount of CE from a single insurer, then larger companies like First American, which has 100 employees in Utah, would have to send their employees to competitors for education. There are agency licensees and insurer licensees; it's most convenient for insurer licensees to get their CE in-house and is also less awkward.
- Nancy agrees with the issue James raised. She would like to see Utah allow producers to get CE from different insurers. She also suggests having prohibitions about overt underwriter plugs in the CE courses; the plug should be the knowledge the presenter has.

- Commissioner Kiser asks if the rule is left in place, would it be practical or possible for a producer to get all their CE from a specific presenter. Nancy says no. Stewart, for instance, uses different underwriters from all the western states for their webinars. One underwriter in particular could do 2 or maybe 3 hours of the required 12 hours. Old Republic has similar numbers and can rotate the presenters as needed.
  - **Commissioner Kiser requests having this added to the December agenda for further discussion.**
  - Commissioner Kiser would like to have a directive in place before January 1, and notes that the UID won't fine anyone over this initially. He would prefer to come to a resolution in December if possible. Quality CE is the most important part of this to him. If a carve-out needs to be done for title, then so be it.
  - Michael has been working with Sircon to get a list of producers who are currently over. The current list runs to Oct. 2019 and has 130 agents already. She will call those agents to notify them.
  - Tanji says that if the TEC decides to make a recommendation about R590-142, it should be done in writing as a comment to the rule so it can be addressed appropriately.
  - Perri notes that the TEC has authority to draft rules, after which the Insurance Commissioner can concur or not concur with the draft. If the carve-out is done specific to title, it should be moved under R592. Legal discussion follows as to the appropriate method for transferring the rule from R590 to R592.
  - Alison asks the TEC if they feel there has been enough discussion to know what they want to do. James is in favor of a title industry carve-out. David says if they're going to come up with a rule, they need to protect anyone who is providing CE. He likes the idea of changing the rule, but there are still things to think about and there needs to be continued discussion. Nancy agrees with James and says there are a lot of ways to do relevant CE. She would prefer allowing producers to get all their CE from one insurer over not getting any CE from any insurer to get half their hours.
  - Alison notes that the TEC's authority is under R592, but asks if Commissioner Kiser would like to do it under R590 or R592. Commissioner Kiser says the TEC are the experts and know the industry better than he does. If it's done under R590, he would want strong input from the industry. Regardless, he would like to review the rule with his team and voice any concerns to Alison and the TEC.
  - David notes that R592-7 is a CE rule but it delegates the TEC's authority regarding CE programs back to Michael. He suggests looking at that rule to see if they should change that rule or make a new one. He also suggests having James bring a draft rule in December. Alison will talk to ULTA this week for their input.
- Legislation / Brett
  - There is no title-specific legislation that the UID is aware of, but the UID's bill will be presented this week to the Business & Labor Interim Committee. It doesn't include anything about title either.
- **Old Business**
  - Update on commissioner terms / Steve
    - Randy Smart met with the Senate last month, and the confirmation hearing will be Wednesday. He will hopefully join the TEC in December.
- **Other Business**
- **Hot Topics**
  - Lender instructions for late or incorrect policies / Alison
    - Alison reads the attached lender instructions and Q&A. The issues up for discussion are 1) whether licensees can pay late fees and 2) whether licensees can licensees certify the agreements.
    - Alison asks wonders if the terms fall under unfair inducement rules. David thinks the last paragraph definitely falls in line with the 2010 bulletin. He has instructed his underwriters escrow officers not to sign terms like these and to include a copy of the bulletin when they return it.

- James says this is a big issue that underwriters see all the time. This contract language at least tries to tie it to a policy of insurance; however, if it included first-lien language it would hew too close to being an unfiled insurance policy. Although this language might not offend the bulletin, there is a lot of language out there on forms that does, and it is signed on a regular basis. It's incumbent on all agencies to revisit that topic from time to time.
- Nancy says she's had agents see language of this sort and they just cross through the first paragraph and sign the instructions. Then that puts it back on the lender whether they will accept it with the crossed-out language.
- Jeff Wiener doesn't think this is an inducement — the agent or insurer would have to deliberately issue an incorrect policy and trigger a payment for it to be an inducement.
- Blake Heiner asks if anyone has seen any lenders try to enforce it. He's seen similar language in lots of instructions, but he's never seen any lender ever try to enforce it.
- David says there were some national lenders who approached an underwriter for payments. He's never seen anything with an agent, but there have been underwriter attempts. **He suggests continuing this discussion.** He likes the 2010 bulletin and suggests maybe issuing a 2017 bulletin that says not to sign instructions like these.
- Commissioner Kiser introduces Tanna Shurtliff. Tanna has been in the industry for more than 20 years. She worked on the lender side, then moved over to title. She's been doing title and escrow for a long time.
- Commissioner Kiser was with a real estate industry lobbyist 3 weeks ago. He brought up the topic of holding earnest money deposits and said the title industry had heartburn over holding earnest. The Commissioner asked whether realtors held money too. The lobbyist said yes, and it's about 50-50 as to who holds it. The Commissioner asked if the realtors would be OK with making legislation that realtors had to control earnest money. The lobbyist said he didn't think they would care at all. The Commissioner said he was under the impression that the lobbyist was going to explore if the realtors wanted to do it. The lobbyist said they're better prepared to settle earnest money quickly. The lobbyist's perspective is that the title industry doesn't want to distribute because they have to follow so many guidelines before they pay out.

#### *Executive Session* (None)

- **Adjourn** (10:17 AM)
  - **Motion by James to adjourn. Seconded by David. Motion passes 4-0.**
- **Next Meeting: December 11, 2017** — Copper Room

#### **2017 Meeting Schedule in Copper Room**

<del>Jan 9</del>	<del>Feb 13 (SOB B110)</del>	<del>Mar 13</del>	<del>Apr 3</del>	<del>May 8</del>	<del>Jun 12</del>
Jul 10	Aug 14	Sept 11	Oct 2	Nov 13	Dec 11